

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SAMARA L. A. SIMMONS,
4419 Hardwood Street
Ladson, South Carolina 29456,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

The Executive Office
Office of the Legal Adviser
600 19th Street, N.W., Suite 5.600
Washington, D.C. 20522,

Defendant.

COMPLAINT

Plaintiff Samara L. A. Simmons (“Plaintiff”) brings this action against the U.S. Department of State (“Defendant”) to compel compliance with the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, as amended, the Privacy Act of 1974, 5 U.S.C. § 552a *et seq.*, as amended, and the Federal Declaratory Judgment Act, 28 U.S.C. § 2201, as amended.

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 5 U.S.C. §§ 552(a)(4)(B), 552a(g)(1), and 28 U.S.C. § 1331.
2. Venue is appropriate in the District under 5 U.S.C. §§ 552(a)(4)(B), 552a(g)(5), and 28 U.S.C. § 1391.
3. Plaintiff is a citizen of the United States and a resident of South Carolina.

4. Defendant U.S. Department of State is an agency of the United States Government headquartered at 2201 C Street, N.W., Washington, D.C. 20520. Defendant has possession, custody, and control of records to which Plaintiff seeks access.

THE FACTS

5. On August 31, 2016, the Plaintiff made a Specific Request of the Defendant for the following records relating to her:

For the period from January 1, 2009 to the present, this request relates to any and all records relating to me, including e-mails and any other form of electronic records, in the care, custody or control of the Bureau of Human Resources (“HR”), including any and all offices and/or units within HR, including but not limited to HR/ER/CSD, HR/DAS, HR/DPAS, HR/G, which may have been generated by me, generated by anyone at State and/or HR, received by State and/or HR, and/or may be to or from anyone within State and/or HR. Such records shall include but not be limited to official performance folders (“OPF”), Merged Official Personnel Folder (Administrative), employee evaluations (“EER”), and security files, including Reports of Investigations (“ROI”), grievance files, security files, investigative files, Reports of Investigation’s (“ROI”), background checks of any kind, SF-86 Forms, and investigative records, evaluations and/or communications of any kind.

1. Within the context of the forgoing “Specific Request,” this request also includes but is not limited to records of any form and/or kind relating in any way to me created by, sent and/or received by, received from, and/or copied to:

- (1) Office Director DS/SI/PSS Douglas P. Quiram;
- (2) DS/PSS/AA Director Paul Hallenbeck;
- (3) DS/PSS/AA Adjudicator Yvette Torres;
- (4) DS/DO/OSI Paul Houston;
- (5) RSO Shane L. Dixon;
- (6) ARSO Clint Richards;
- (7) ARSO-I Jason A. Giuliani;
- (8) DS/TIA/PII Travis T Blanton;
- (9) DS/TIA/PII Matthew Wolsey;
- (10) D/RSO Joseph W Jung;
- (11) DS/DO/OSI Michael Conklin;
- (12) DS/Security Specialist Anne Heather Marken;
- (13) MED Office Manager Ferolyn Brooks;
- (14) MED/MHS Dr. Filson;
- (15) MED/MHS Dr. Ubben;

- (16) MED/MHS Lorraine A. Stanton;
- (17) MED/RMO P Stephen A. Young;
- (18) RMO/P Kenneth B. Dekleva;
- (19) L/EMP Paige E Williams;
- (20) DS/PSS Daryl L. Johnston;
- (21) DS/PSS Michael A. Viggiano;
- (22) East Orange General Hospital in Newark, New Jersey;
- (23) CDJ Post: Consul General Ian Brownlee;
- (24) CDJ Post: Consul General Daria Darnell;
- (25) CDJ Post: Deputy Consul General Eric Cohen;
- (26) HR/ER/CSD Jo Ellen Powell;
- (27) HR/ER/CSD-Kimberly Brooks;
- (28) HR/ER/CSD-Jeanne Julia;
- (29) HR/ER/CSD- Christopher Misciagno;
- (30) L/EMP-Annalise Nelson;
- (31) CDJ Post: CA/FPP/CID-Aaron Rader;
- (32) HR/DAS for civil service Philippe Lussier;
- (33) HR/PDAS Constance Dierman;
- (34) HR/G Director Melinda Chandler; and/or
- (35) HR/G Grievance Analyst Elisabeth Whittaker

2. Within the context of the forgoing “Specific Request,” this also includes any and all records relating in any way to me received and/or obtained, either directly or indirectly, from East Orange General Hospital in Newark, New Jersey.

6. The request described in paragraph “5.” was transmitted by facsimile on September 1, 2016 and a receipt of a successful transmission was received that same day.

7. The request described in paragraph “5.” was also transmitted on September 3, 2016 by certified mail, return receipt requested. On September 16, 2016, a PS Form 3811 acknowledgment of receipt was transmitted to the Plaintiff.

8. On September 9, 2016, the Plaintiff transmitted by certified mail, return receipt requested another Specific Request of the Defendant for the following records relating to her:

For the period from January 1, 2009 to the present, this request relates to any and all records relating to me, including e-mails and any other form of electronic records, in the care, custody or control of the U.S. Consulate Ciudad Juarez (“CDJ”).

1. Within the context of the forgoing “Specific Request,” this request also includes but is not limited to records of any form and/or kind relating in any way to me created by, sent and/or received by, received from, and/or copied to:
 - (1) Office Director DS/SI/PSS Douglas P. Quiram;
 - (2) DS/PSS/AA Director Paul Hallenbeck;
 - (3) DS/PSS/AA Adjudicator Yvette Torres;
 - (4) DS/DO/OSI Paul Houston;
 - (5) RSO Shane L. Dixon;
 - (6) ARSO Clint Richards;
 - (7) ARSO-I Jason A. Giuliani;
 - (8) DS/TIA/PII Travis T Blanton;
 - (9) DS/TIA/PII Matthew Wolsey;
 - (10) D/RSO Joseph W Jung;
 - (11) DS/DO/OSI Michael Conklin;
 - (12) DS/Security Specialist Anne Heather Marken;
 - (13) MED Office Manager Ferolyn Brooks;
 - (14) MED/MHS Dr. Filson;
 - (15) MED/MHS Dr. Ubben;
 - (16) MED/MHS Lorraine A. Stanton;
 - (17) MED/RMO P Stephen A. Young;
 - (18) RMO/P Kenneth B. Dekleva;
 - (19) L/EMP Paige E Williams;
 - (20) DS/PSS Daryl L. Johnston;
 - (21) DS/PSS Michael A. Viggiano;
 - (22) East Orange General Hospital in Newark, New Jersey;
 - (23) CDJ Post: Consul General Ian Brownlee;
 - (24) CDJ Post: Consul General Daria Darnell;
 - (25) CDJ Post: Deputy Consul General Eric Cohen;
 - (26) IV Chief Jeffery Pilgreen
 - (27) IV Deputy Katie Plona
 - (28) NIV Chief David Seckler
 - (29) HR/ER/CSD Jo Ellen Powell;
 - (30) HR/ER/CSD-Kimberly Brooks;
 - (31) HR/ER/CSD-Jeanne Juliaio;
 - (32) HR/ER/CSD- Christopher Misciagno;
 - (33) L/EMP-Annalise Nelson;
 - (34) CDJ Post: CA/FPP/CID-Aaron Rader;
 - (35) HR/DAS for civil service Philippe Lussier;
 - (36) HR/PDAS Constance Dierman;
 - (37) HR/G Director Melinda Chandler; and/or
 - (38) HR/G Grievance Analyst Elisabeth Whitaker
2. Within the context of the forgoing “Specific Request,” this also includes any and all records relating in any way to me received and/or obtained,

either directly or indirectly, from East Orange General Hospital in Newark, New Jersey.

9. On September 23, 2016, in a PS Form 3811 acknowledgment of receipt, the Defendant acknowledged receipt of the request identified in paragraph “8.”

10. As of the date of this Complaint, Defendant has failed to: (i) produce the requested records described in paragraphs “5.” and “8.” above or demonstrate that the requested records are lawfully exempt from production; (ii) notify Plaintiff of the scope of any responsive records Defendant intends to produce or withhold and the reasons for any withholdings; or (iii) inform Plaintiff that it may appeal any adequately specific, adverse determination.

COUNT I

(Violation of the FOIA and the Privacy Act, 5 U.S.C. §§ 552, 552a)

11. Plaintiff realleges paragraphs “1.” through “10.” as if fully stated herein.

12. Defendant is in violation of the FOIA and the Privacy Act.

13. Plaintiff is being irreparably harmed by Defendant’s violation of the FOIA and the Privacy Act, and Plaintiff will continue to be irreparably harmed unless Defendant is compelled to comply with the FOIA and the Privacy Act.

14. To trigger FOIA’s administrative exhaustion requirement, Defendant was required to make a final determination on Plaintiff’s FOIA requests within the time limits set by the FOIA. Accordingly, Defendant’s determination was due by October 6, 2016 at the latest, with respect to the August 31, 2016 request, and by September 13, 2016, at the latest, with respect to the September 9, 2016 request.

15. Because Defendant failed to make a determination of any kind on Plaintiff’s requests for records set forth in paragraphs “5.” and “8.” above within the time limits set by the FOIA, Plaintiff is deemed to have exhausted her administrative appeal remedies.

WHEREFORE, Plaintiff respectfully requests that the Court grant all appropriate relief for the violations alleged above, including:

- a. An order and judgment requiring the Defendant to conduct searches for any and all records responsive to the requests for records set forth in paragraphs “5.” and “8.” above and demonstrate that it employed search methods reasonably likely to lead to the discovery of all records responsive to the Plaintiff’s requests;
- b. An order and judgment requiring the Defendant to produce, by a date certain, any and all non-exempt records responsive to the requests and *Vaughn* indices of any responsive records withheld under claim of exemption;
- c. An order and judgment permanently enjoining Defendant from continuing to withhold any and all non-exempt records responsive to Plaintiff’s FOIA and Privacy Act requests;
- d. An order granting Plaintiff attorneys’ fees and other litigation costs reasonably incurred in this action pursuant any applicable statute, including but not limited to 5 U.S.C. § 552(a)(4)(E) and 5 U.S.C. § 552a(g)(2)(B).
- e. Any other relief that this Court in its discretion deems just and proper.

Respectfully submitted,

/s/ Stuart H. Deming
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Counsel for Plaintiff

Dated: July 11, 2019